

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 12, 2019
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2019-08 Deveny (Shorten)

Action Requested

Consider Client Security Fund Committee's recommendation that the board grant claimant Barbara Shorten's claim of \$50,000 in the matter of CSF Claim No. 2019-08 Deveny (Shorten).

Discussion

Through her counsel, Stanley Gish, Claimant Barbara Shorten reports that she retained Ms. Deveny in September 2015 to represent her to recover damages for injuries sustained in a car accident on August 20, 2015. As a result of the accident, Ms. Shorten permanently lost the use of her legs and is now paraplegic.

Ms. Shorten recalls she agreed to a contingent fee agreement, in which Ms. Deveny was to receive one-third of the settlement. She never received a copy of the written fee agreement from Ms. Deveny.

On or about October 12, 2015, without Ms. Shorten's knowledge or consent, Deveny settled claimant's claim against MetLife and accepted a \$100,000 settlement check from Met Life in 2015. She deposited the check in her IOLTA trust account on or about October 27, 2015. Deveny did not disburse any of the \$100,000 check to Ms. Shorten or to OHSU, the other payee and lienholder listed on the check.

On or about January 21, 2016, Ms. Deveny settled an outstanding wage loss PIP claim for \$15,000 and applied the payment to Ms. Shorten's medical bills at OHSU. The PIP payment is not the subject of this claim.

Sometime in July 2018, after she had resigned from B from the bar, Ms. Deveny told Ms. Shorten that she received a settlement of some kind, but did not share the amount with Ms. Shorten. Ms. Shorten believed that Ms. Deveny would place any settlement proceeds in an income cap trust, with Deveny as trustee for Medicaid qualification purposes, but Ms. Deveny never did so.

The funds are no longer in Ms. Deveny's trust account and are alleged to have been stolen by Ms. Deveny. Through counsel, Ms. Deveny declined to participate in the CSF investigation and asserted her Fifth Amendment right against self-incrimination.

Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending.

At its March 2018 meeting, the Client Security Fund Committee reviewed Ms. Shorten's claim and unanimously voted to recommend that the Board reimburse her for \$50,000 of her loss. Ms. Shorten's claim would not ordinarily be eligible for reimbursement at this time, pursuant CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Ms. Shorten has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon her circumstances and the available evidence.

Mr. Gish seeks recovery of his attorney fees in this matter for an unknown amount from the CSF reimbursement. His hourly rate is \$240, and he has agreed to cap his fees at 20% of any funds recovered with a minimum \$1000 fee. Pursuant to Rule 2.5, the Committee considered the reasonableness of Mr. Gish's fee arrangement with Mr. Shorten and found that it was reasonable in theory, but the Committee was unable to determine whether the actual amount of the fee charged was reasonable because it had insufficient information. After the meeting, staff asked Mr. Gish for more information about his fee. He responded and stated he had spent 20.1 hours on the Shorten CSF matter, and his total fee, based on the agreed rate of \$240 per hour, is \$4,824.

Staff recommends that the board approve the claim, consistent with the CSF Committee's recommendation.